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Datuk Bandar Kuala Lumpur v Kuala Lumpur Golf & Country Club Bhd

B FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 02–14 OF 2004(W)
SITI NORMA YAAKOB CJ (MALAYA), STEVE SHIM CJ (SABAH & SARAWAk) AND ABDUL HAMID MOHAMAD FCJ
3 JUNE 2005

C *Limitation — Expiry of period — Extension of limitation period — Whether time can be extended despite mandatory nature of statute — Whether general power of the court to extend time under the Courts of Judicature Act 1964 could apply to a particular statute which imposes express time stipulation and which statute does not itself provide for extension of time*

D *Local Government — Rates — Annual value — Originating motion filed to set aside — Whether proper as amount of rate not paid 'with the filing of the originating motion' — Local Government Act 1976 s 145(1)*

E On 31 December 1996, the respondent filed an originating motion under s 145 of the Local Government Act 1976 ('the Act') to set aside the total annual value of the land of RM5,760,000 and that the annual value be substituted by the estimated gross annual rent of the land amounting to RM1,300,000 only. This was an appeal against
F the decision of the appellant under s 145(1) of the Act. The appellant raised a preliminary objection that the appeal was not properly brought because the respondent did not pay the appellant the amount of the rate appealed against 'with the filing of the originating motion', as required by the proviso to s 145(1) of the Act. On 9 June 1997, the respondent filed the originating motion praying that the time for the payment of the amount of the rate appealed against be extended to 6 February
G 1997, the day it was paid. The High Court allowed the respondent's application. On 25 October 2004, this court granted the appellant an extension of time to appeal and leave to appeal to this court on the following questions of law: (a) whether the time to pay the rates appealed against, which by the proviso to s 145(1) of the Act is stated to be at the time of filing the motion could, despite its mandatory nature,
H be extended by the court; (b) whether the general power of the court to extend time under the Courts of Judicature Act 1964 could apply to a particular statute which imposes express time stipulations and which statute does not itself provide for extension of time.

I **Held**, dismissing the appeal:

(1) An appeal lies to the High Court from the decision of the local authority regarding the objection to the valuation. This court has held in *Majlis Perbandaran Klang v Zakiyah bte Samad* [2004] 2 MLJ 593 that the rate of

assessment is not appealable. What is appealable under s 145(1) as held in *Shell Malaysia Trading Sdn Bhd v Majlis Perbandaran Klang* [1988] 3 MLJ 418 is the annual value. However, s 145(1) provides the amount of the rate shall be paid to the local authority 'with the filing of the originating motion', when the new rate, based on the new valuation may not have been imposed or notified yet (see para 12).

(2) For something to be a condition precedent, the 'condition' must exist or must be known at the time it is required to be fulfilled. It is said that the respondent should have enquired. But, the duty to notify the rate rests on the appellant. There is no duty on the respondent to enquire. Furthermore, the old rate is based on the old valuation. The old valuation is not the disputed valuation. It is the new valuation that is in dispute. On the facts of this case, the requirement to pay the rate with the filing of the originating motion cannot be a condition precedent (see para 15).

(3) Whether the time for payment of the rate as provided by s 145(1) can be extended or not depends on whether at the time of filing the originating motion, the amount has been made known to the respondent. If the amount had not been made known to the respondent the condition requiring payment at that point of time is incapable of performance. Therefore, the interest of justice requires that the time may be extended by the court so as not to frustrate the right of appeal of the respondent (see para 31).

(4) Whether the general power of the court to extend time under para 8 of the Sch to the Courts of Judicature Act 1964 ('the CJA') is applicable or not to a statute that does not provide the power for the extension of time will depend on the provision of the statute. If from the wording of the statute, the time prescribed for the performance of an act is mandatory and the condition to be fulfilled exists during the period and is capable of performance, the general power to extend time under para 8 of the Sch to the CJA is not applicable. But, in this case, where the condition ie, the payment of the rate has not existed because the amount thereof is not yet known to the respondent and is therefore incapable of performance by the respondent, the interest of justice requires that the general power to extend may be ordered by the court (see para 32).

[Bahasa Malaysia summary

Pada 31 Disember 1886, responden memfailkan usul pemula di bawah s 145 Akta Kerajaan Tempatan 1971 ('Akta tersebut') untuk mengenepikan jumlah nilai tahunan hartanah tersebut sebanyak RM5,760,000 dan bahawa nilai tahunan tersebut diganti dengan sewa anggaran kasar tahunan tanah tersebut sebanyak RM1,300,000 sahaja. Ini adalah rayuan terhadap keputusan perayu di bawah s 145(1) Akta tersebut. Perayu membangkitkan bantahan awal bahawa rayuan tersebut tidak dikemukakan dengan betul oleh kerana responden tidak bayar kepada perayu amaun kadar yang dirayukannya itu 'ketika memfailkan usul pemula', seperti yang dikehendaki oleh proviso kepada s 145(1) Akta tersebut. Pada 9 Jun 1997, responden memfailkan usul pemula memohon agar masa untuk pembayaran amaun kadar yang dirayukannya tersebut dilanjutkan ke 6 Februari 1997, hari yang dibayarnya. Mahkamah Tinggi membenarkan permohonan responden. Pada 25 Oktober 2004, mahkamah ini

membenarkan perayu lanjutan masa untuk merayu dan kebenaran merayu ke mahkamah ini atas soal undang-undang: (a) sama ada masa untuk membayar kadar yang dirayu tersebut, dimana mengikut proviso kepada s 145(1) Akta tersebut dinyatakan sebagai dengan pemfailan usul tersebut, walaupun bersifat mandatori dapat dilanjutkan oleh mahkamah; (b) sama ada kuasa am mahkamah untuk melanjutkan masa di bawah Akta Kehakiman Mahkamah 1964 boleh dipakai kepada sesuatu statut yang mengenakan syarat masa yang nyata dan statut dengan sendirinya tidak membekalkan lanjutan masa.

Diputuskan, menolak rayuan tersebut:

(1) Sesuatu rayuan boleh dibawa ke Mahkamah Tinggi daripada keputusan badan berkuasa tempatan berhubungan dengan bantahan terhadap penilaian. Mahkamah ini telah memutuskan dalam *Majlis Perbandaran Klang v Zakiyah bte Samad* [2004] 2 MLJ 593 bahawa kadar penilaian tidak boleh dirayu. Apa yang boleh dirayu di bawah s 145(1) seperti yang diputuskan dalam *Shell Malaysia Trading Sdn Bhd v Majlis Perbandaran Klang* [1988] 3 MLJ 418 ialah nilai tahunan. Akan tetapi, s 145(1) memperuntukkan amaun kadar yang harus dibayar kepada badan berkuasa tempatan dengan pemfailan usul pemula, apabila kadar baru berdasarkan penilaian baru berkemungkinan masih belum lagi dikenakan ataupun dimaklumkan (lihat perenggan 12).

(2) Untuk menjadikan sesuatu sebagai pra syarat, 'syarat' tersebut mesti wujud ataupun diberitahu pada masa ia perlu untuk ditunaikan. Ia dikatakan bahawa responden sepatutnya membuat pertanyaan. Akan tetapi, kewajipan untuk memaklumkan adalah dengan perayu. Tiada kewajipan atas responden untuk membuat pertanyaan. Lagipun, kadar yang lama adalah berdasarkan penilaian yang lama. Penilaian yang lama bukannya penilaian yang dipertikaikan. Ia adalah penilaian yang baru dipertikaikan. Atas fakta-fakta kes ini, keperluan membayar kadar dengan pemfailan usul pemula tidak boleh dijadikan satu pra syarat (lihat perenggan 15).

(3) Sama ada masa untuk pembayaran kadar yang diperuntukkan oleh s 145(1) boleh dilanjutkan atau tidak bergantung kepada sama ada pada masa pemfailan usul pemula, amaun tersebut telah dimaklumkan kepada responden. Sekiranya amaun tersebut masih belum lagi dimaklumkan kepada responden, syarat yang memerlukan pembayaran pada masa tersebut adalah tidak dapat dilaksanakan. Dengan itu, demi keadilan, masa dapat dilanjutkan oleh mahkamah supaya ia tidak mengecewakan hak rayuan responden (lihat perenggan 31).

(4) Sama ada kuasa am mahkamah untuk melanjutkan masa di bawah perenggan tujuh kepada Jadual kepada Akta Kehakiman Mahkamah1964 ('AKM tersebut') adalah terpakai atau tidak terhadap sesuatu statut yang tidak memberikan kuasa untuk melanjutkan akan bergantung kepada peruntukan statut tersebut. Sekiranya daripada perkataan statut tersebut, masa dinyatakan untuk membuat sesuatu adalah mandatori dan syarat untuk menyempurnakan wujud pada masa tersebut dan dapat dilaksanakan, kuasa am untuk melanjutkan masa di bawah perenggan 8 Jadual kepada AKM adalah tidak terpakai. Akan tetapi, dalam kes ini, dimana syarat iaitu, bayaran kadar masih belum wujud oleh kerana amaun tersebut masih belum diketahui responden

dan dengan itu tidak dapat dilaksanakan oleh responden, kepentingan keadilan memerlukan bahawa kuasa am untuk pelanjutan diperintahkan oleh mahkamah (lihat perenggan 32).]

Notes

For a case on extension of limitation period, see 9 *Mallal's Digest* (4th Ed, 2002 Reissue) para 2207.
For cases on annual value, see 10 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 136–137.

Cases referred to

Majlis Peguam & Anor v Tan Sri Dato' Mohamed Yusoff bin Mohamed [1997] 2 MLJ 271 (refd)
Shell Malaysia Trading Sdn Bhd v Majlis Perbandaran Klang [1988] 3 MLJ 418 (refd)
Majlis Perbandaran Klang v Zakiyah bte Samad [2004] 2 MLJ 593 (refd)

Legislation referred to

Courts of Judicature Act 1964 s 25(2), Sch para 8
Legal Profession Act 1976 ss 15, 16, 17
Local Government Act 1976 ss 127, 130, 133, 137, 141, 142, 143, 144, 145

Cyrus Das (Romesh Abraham with him) (Shook Lin & Bok) for the appellant.
Robert Lazar (Teh Lay Kheng with him) (Shearn Delamore & Co) for the respondent.

Abdul Hamid Mohamad FCJ (delivering judgment of the court):

[1] On 31 December 1996, the respondent filed an originating motion under s 145 of the Local Government Act 1976 ('the Act') praying for the following order that:

(i) the decision of Datuk Bandar, Kuala Lumpur made on the 27th November 1996 whereby the total annual value of the land held under PT 3561 and PT3557, HS (D) 71258 and 71262 respectively, Mukim Kuala Lumpur, Daerah Wilayah Persekutuan was revised to a total sum of RM5,760,000 be set aside and that the annual value be substituted by the estimated Gross Annual Rent of the land amounting to RM1,300,000 only.

(ii) the costs of this appeal be taxed by the proper officer of this court and be paid by the respondent to the appellant.

[2] That was in fact an appeal against the decision of the appellant under s 145(1) of the Act. As at the time of the filing of the originating motion, the respondent had not paid the rate appealed against. The amount was only paid on 6 February 1997, ie about five weeks later.

[3] On 3 May 1997, the appellant filed an affidavit in reply raising, inter alia, a preliminary objection that the appeal was not properly brought because the respondent did not pay to the appellant the amount of the rate appealed against 'with the filing of the originating motion' as required by the proviso to s 145(1) of the Act.

A **[4]** On 9 June 1997, the respondent filed the originating motion praying that the time for the payment of the amount of the rate appealed against be extended to 6 February 1997, the day it was paid. The High Court allowed the respondents application.

B **[5]** On 25 October 2004, this court granted the appellant an extension of time to appeal and leave to appeal to this court on the following questions of law:

(a) whether the time to pay the rates appealed against, which by the proviso to s 145(1) of the Local Government Act 1976 is stated to be at the time of filing the motion could, despite its mandatory nature be extended by the court;

C (b) whether the general power of the court to extend time under the Courts of Judicature Act 1964 could apply to a particular statute which imposes express time stipulations and which statute does not itself provide for extension of time.

D **[6]** I shall first state the law. In so doing, it is important to look at the scheme of the legislation more widely and not just the provisions of s 145(1) that are in issue. The relevant part of the Act is Part XV with the heading 'Rating and Valuation'. Section 127 empowers the local authority to impose the annual rate or rates within a local authority. Section 130 provides the basis of assessment of the rate or rates E which may be assessed 'upon the annual value of holdings or upon the improved value of holdings'. According to s 33, the rate or rates so imposed 'shall endure for any period not exceeding twelve months'.

[7] Section 137 talks about the preparation of a valuation list. The valuation list remains in force until it is superseded by a new valuation list which shall be prepared F and completed once every five years or within such extended period as the State Authority may determine.

[8] Section 141 requires that the notice of the new valuation list be published. Any person aggrieved by the valuation may make objections to the local authority G within fourteen days before the time fixed for the revision of the valuation list pursuant to s 142.

[9] Section 143, inter alia, requires the local authority to confirm the valuation list on or before 31 December of the year preceding the year in which any valuation list H is to come into force, with or without amendment or revision. The local authority is not required to hear and determine all objections to the valuation list before confirming it. But the local authority is required to hear objections not heard and determined before the valuation list is confirmed as soon as possible. Until an objection has been heard and determined, the increase in the valuation or new valuation objected to shall not be deemed to be in force and the old rates shall I continue to be payable subject to s 143(3).

[10] Section 144 provides for any amendment to the valuation list by the valuation officer. Notice must be given to all persons interested in the amendment subject to subsection (2), and subsection (3) provides that any person aggrieved by

the amendment to the valuation list may make objection in writing to the local authority not less than ten days before the time fixed in the notice. Any amendment made in the valuation list shall be confirmed by the local authority pursuant to subsection (5).

[11] Then comes s 145(1) and the proviso thereto, the provisions of which are in issue:

> 145. (1) Any person who having made an objection in the manner prescribed by s 142 or 144 is dissatisfied with the decision of the local authority thereon may appeal to the High Court by way of originating motion:
>
> Provided that with the filing of the originating motion there shall be paid into the local authority the amount of the rate appealed against.

[12] It should be noted that there has to be a valuation list first before the rate can be imposed. An aggrieved party may object to a new valuation list at any time not less than fourteen days before the time fixed for the revision of the valuation list. Whether the objection has been heard or not, the valuation list has to be confirmed on or before 31 December of the year preceding in which the valuation list is to come into force. An appeal lies to the High Court from the decision of the local authority regarding the objection to the valuation. Indeed, this court has held in *Majlis Perbandaran Klang v Zakiyah bte Samad* [2004] 2 MLJ 593 that the rate of assessment is not appealable. What is appealable under s 145(1) as held in *Shell Malaysia Trading Sdn Bhd v Majlis Perbandaran Klang* [1988] 3 MLJ 418 is the annual value. However, s 145(1) provides the amount of the rate shall be paid to the local authority 'with the filing of the originating motion', when the new rate, based on the new valuation may not have been imposed or notified yet.

[13] Reverting to the facts of this case, the decision by the appellant regarding the respondent's objection was received on 17 December 1996. In accordance with s 145(2), the originating motion must be filed by 31 December 1996. The respondent only received the notification as to the amount of the rate payable for the year 1997 on 13 January 1997. The amount was paid on 6 February 1997. The point is, by 31 December 1996, the last day for the respondent to appeal against the valuation, the rate that is required by s 145 to be paid 'with the filing of the originating motion' was not known to the respondent yet. That is why the respondent could not pay the rate at the time of filing the notice of motion.

[14] Learned counsel for the appellant argued that the proviso to s 145(1) is a condition precedent to the filing of the originating motion. Failure to pay the rate renders the appeal against the valuation a nullity. The appellant takes the view that if the new rate was not known, the respondent should have enquired or pay an amount equal to the old rate.

[15] Is the proviso to s 145(1) a condition precedent to the filing of the originating motion? On the face of it, it appears to be so. In fact, it is so where the notification regarding the rate is given and received by the objector within fourteen days from the date of the decision by the local authority dismissing the objection. But, as in this

A case, where the respondent had not been notified of the rate, can a requirement that has not existed or, at least, not made known to the respondent be a condition precedent that must be fulfilled by the respondent? I do not think so. In the first place, for something to be a condition precedent, the 'condition' must exist or must be known at the time it is required to be fulfilled. It is said that the respondent should have enquired. But, the duty to notify the rate rests on the appellant. There is no duty on the respondent to enquire. In any event, there is no evidence that the rate had been fixed by 31 December 1996. It is also said that the respondent should have paid the old (1996) rate. The short answer to that is that there is nothing in the law to say so. Furthermore, the old rate is based on the old valuation. The old valuation is not the disputed valuation. It is the new valuation that is in dispute. It might be different if the objection had not been heard by 31 December 1996. In that case, by virtue of s 143(3) the increase in the valuation or the new valuation is not deemed to be in force and the old rate shall continue to be payable. Under such circumstances, the argument may be on a firmer ground. But this is not such a situation. Here, the objection has been heard and determined before 31 December 1996, so s 143(3) does not apply.

[16] In my view, on the facts of this case, the requirement to pay the rate with the filing of the originating motion cannot be a condition precedent.

[17] The next question is whether the court has the power to extend the time to make payment of the rate. The law is silent: It does not say that it can be done and it does not say that it cannot be done. Under the circumstances, the court is at liberty to look at the general law. Paragraph 8 of the Sch to the Courts of Judicature Act 1964 ('CJA 1964') and the proviso thereto contain the following provisions:

> 8. Time
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> Power to enlarge or abridge the time prescribed by any written law for doing any act or taking any proceeding, although any application therefor be not made until after the expiration of the time prescribed.
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> Provided that this provision shall be without prejudice to any written law relating to limitation.

[18] This provision has been considered by the Supreme Court in *Majlis Peguam & Anor v Tan Sri Dato' Mohamed Yusoff bin Mohamed* [1997] 2 MLJ 271. This case was in fact relied on by the learned judge. However, the learned judge merely relied on some dicta in Mohd Azmi FCJ's judgment. It is important to note that in that case, the Federal Court, in fact, disagreed with the learned High Court judge who allowed the three months period to be abridged. Few things appear to distinguish that case from the instant appeal. First, that case concerns the interpretation of ss 15 and 16 of the Legal Profession Act 1976. Section 15(3) requires the filing of an affidavit not less than fourteen days before the petition is to be heard contains the clause 'or such shorter period as the court may allow'. However, subsection (5) of the same section requires notice of the petition to be posted for three months before the petitioner is admitted and enrolled as an advocate and solicitor does not contain such a clause. On the other hand, s 16(1) requires that the petition and the affidavit be served not less than ten days before the date fixed for the hearing of the petition also

contains the clause 'or such shorter period as the court may allow.' It is therefore obvious that the omission of the clause in subsection (5) of s 15 is intended to mean that the period is mandatory and may not be abridged. Secondly, 'the omission of such power from s 15(5) clearly implies that the three-month period is a mandatory requirement not only because anyone reading the notice would not know the date of hearing of the petition and the time period by which he has to lodge a caveat but also because the notice is addressed to the world at large and as such it is important that the prescribed time period of three months which by any standard is not excessive for the purpose of notification to the general public should not be shortened' as per Mohd Azmi FCJ.

[19] In the present case, the whole of s 145 is silent regarding extension of time. Regarding the second point, the time involved is the time to pay the rate. It only concerns the appellant. If at all, it is only the appellant who could be prejudiced. However, in this case, there is nothing to suggest that the rate was not paid within the time stipulated in the notice of assessment. So, the appellant was not prejudiced. Neither was the appellant prejudiced by the filing of the originating motion by the respondent because that is a statutory right of the respondent and the notice of motion was filed within the time stipulated for the filing thereof. The only complaint was that the amount of the new rate was not paid at the time of the filing of the originating motion. But, at that time, the new rate had not been made known to the respondent and was not even due yet as the notice of the new rate had not been given to the respondent. So, there can be no prejudice to the appellant.

[20] Coming back to the judgment of Mohd Azmi FCJ in *Majlis Peguam*, the learned judge made the following observations on para 8 of the Schedule to CJA 1964 of his judgment.

> In our view, it is obvious that Parliament intended that the High Court should be conferred with outright additional general powers to be exercised judicially whenever circumstances demand, in accordance with any existing written law or rules of court, relating thereto.

[21] Again at p 291 the following is most instructive:

> We therefore hold that merely because para 8 of the schedule to the 1964 Act has conferred a general power of abridgment, it does not follow that Parliament is precluded from conferring express power of abridgement in any particular legislative provision. Similarly, it does not mean that Parliament cannot prohibit such general power from being invoked either expressly or by necessary implication. In this case, we are more than satisfied that the prescribed time in s 15(5) is intended to be mandatory and as such, the court ought not to exercise its general power under para 8 of the 1964 Act to abridge the period of posting. The general powers in the Schedule are discretionary, and like any other discretions, they must be exercised in a way which in all the circumstances best reflect the requirement of justice which for the purpose of ss 15(5) and 17 require the court to take into account not only the interest of the petitioner and the Bar Council and Bar Committee but also the interest of the general public for whose benefit the provision of s 17 has been specially enacted.

[22] And further, at pp 291–292:

> The rule is that a prescribed time in any written law is always presumed and construed as mandatory unless there is express power in that particular law to abridge or extend. The general provision in para 8 of the Schedule is a power-conferring provision which has no pre-condition except that it must be exercised in accordance with any existing written law or rules of court relating thereto. Apart from the interpretation legislation and the 1976 Act itself, there is no other legislation or rules of court relating to the subject matter under discussion. As such, the general power under para 8 must be exercised in accordance with and not contrary to the mandatory provision of s 15(5). In addition, even if the general discretionary power in para 8 to abridge or extend were applicable, it must be exercised judicially, not arbitrarily or capriciously, and it ought not to be exercised unless the requirement of justice is satisfied. Thus, even assuming for one moment that the provision of s 15(5) had nothing to do with third party rights, and could be construed as not obligatory, the court must exercise the discretion in accordance with correct principle. We accordingly rule that the learned trial judge erred in law in holding that the High Court had power to abridge the time period of three months prescribed by s 15(5) of the 1976 Act, by virtue of the powers conferred by para 8 of the Schedule to s 25(2) of the 1964 Act.

[23] I think, it would be quite fair for me to summarise the judgment as follows: Paragraph 8 of the Schedule to CJA 1964 is a general power conferred by Parliament on the High Court. However, the fact that the general power exists does not prevent Parliament from conferring 'express power' of abridgment in a particular statute. The provisions in ss 15(3) and 16(1) are such provisions. Section 15(5) requiring the notice to be posted for three months with no provision for abridgment is a mandatory provision. The reason is that, besides the absence of the clause conferring power to the court to abridge the period, the notice is addressed to the world at large so that anyone reading it would know the time period by which he has to lodge a caveat, if he wants to. Therein, lies the rational of the judgment.

[24] This is made clear by the concurring judgment of Edgar Joseph Jr FCJ and I shall quote the relevant parts from the headnote:

> (6) (Per Edgar Joseph JrFCJ) It should be noted that under the Act, no power is given to the court to abridge the time period of posting prescribed in s 15(5) and this is emphasized by the contrast s 15(5) displays when it is compared with ss 15(3) and 16(1) wherein time is mentioned and the words 'or such shorter time as the court may allow' occur. In such a situation, the presumption that a deliberate change of wording denotes a change in meaning can be invoked (see p 295D), *Ricket v Metropolitan Ry Co* [1867] LR 2 HL 175 followed.
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> (7) (Per Edgar Joseph Jr FCJ) The purpose of s 15(5) is to give notice to the world at large that a particular individual has petitioned to the court to be admitted and enrolled as an advocate and solicitor to enable any member of the public who wishes to object to enter a caveat under s 17 of the Legal Profession Act. The three-month period is incorporated into s 15(5) as a reasonable period of time for such notice and it is not for the court to query legislation but merely to give effect to the will of Parliament as expressed in the law. As no hearing date is specified in the notice that a petitioner has petitioned, allowing an abridgement of the time period could frustrate the purpose of s 15(5). Hence, the time period under s 15(5) is mandatory (see pp 295E, G and 296C-D).

(8) (Per Edgar Joseph Jr. FCJ) It should be recognized that para 8 of the Schedule is a general measure and speaks about powers of the High Court to enlarge or abridge time prescribed by any written law, whereas s 15(5) is a specific measure with no power given to enlarge or abridge time. There is thus an apparent conflict between these two measures, and in such a situation, the specific measure overrides the general measure (see p 296F-G; *Lee Lee Cheng (f) v Seow Peng Kwan* [1960] MLJ 1 followed.

(9) (Per Edgar Joseph Jr. FCJ) It follows that the words of s 25(2) of the Act, 'The High Court shall have the additional powers set out in the Schedule' are not merely declaratory of the powers of the High Court but are power-conferring words. The decision of the Federal Court in *Pahang South Union Omnibus Co Bhd v Minister of Labour & Manpower & Anor* [1981] 2 MLJ 199, to the contrary, on this point, disapproved, since it had treated the word 'power' in s 25(2) and in para 1 of the Schedule to the Act as though it means no more than jurisdiction (see pp 2971 and 298A-B); *Lee Lee Cheng (f) v Seow Peng Kwan* [1960] MLJ 1 followed.

(10) (Per Edgar Joseph Jr FCJ) Section 25(2) of the Act and the proviso thereto, read in conjunction with para 8 should be interpreted to mean that the exercise of the power under para 8 should be made in accordance with written laws or rules of court relating to the same. The proviso does not mean that if no written laws or rules of court exist that the general power conferred by para 8 cannot be exercised (see p 297B); *Damodaran v Vasudevan* [1975] 2 MLJ 231 and *Rama Chandran v Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 followed.

(11) (Per Edgar Joseph Jr FCJ) Hence, s 15(5) is mandatory, and thus prohibits the court form abridging the time limit therein by resorting to its general power under para 8 of the Schedule. To hold otherwise would be in direct contradiction of s 25(2) of the Act and therefore not in accordance with written law (see p 298C-D).

[25] It is to be noted that whereas Mohd Azmi FCJ spoke of 'express power', Edgar Joseph Jr FCJ spoke of 'specific measure'. They mean the same thing ie, general provision and specific provision.

[26] So, we see that while para 8 confers a general power on the court to extend and abridge time, that power may be taken away by specific provision in a particular statute.

[27] Has that power been taken away in the instant appeal? First, there is a complete silence in s 145 about extension of time contrary to s 15 of the Legal Profession Act 1976 where subsection 15(3) contains such provision but subsection 15(5) does not, followed by s 16(1) which contains that provision again. So, it appears to me that there is a stronger ground for saying that the general power has been taken away in s 15(5) than in s 145.

[28] Secondly, unlike the posting of the notice as required by s 15(5) of the LPA 1976 which is addressed to the world at large to enable people to know and to file a caveat if anybody wants to, the proviso to s 145(1) only talks about the time of payment of the rate. The world is not involved. It only concerns the appellant.

A **[29]** Thirdly, on the facts of this case, to read the proviso to s 145(1) as mandatory and denying the court the power to extend time under para 8 would lead to grave injustice to the respondent through no fault of theirs. The respondent had not been notified of the new rate at the time they had to file the originating motion as the rate was not yet due from the respondent to the appellant. In short, the condition imposed by the proviso, as at the time of the filing of the originating motion was incapable of performance yet.

[30] Under such circumstances, I do not think it can be said that, first, the general power has been removed by the proviso to s 145(1) and secondly, it was not a proper exercise of the discretion on the part of the learned judge that the respondent be allowed to pay on 6 February 1997 instead of 31 December 1996, the day the originating motion was filed.

[31] In the circumstances, I would answer the questions posed in the following manner:

On Question (a):

Whether the time for payment of the rate as provided by s 145(1) can be extended or not depends on whether at the time of filing the originating motion, the amount has been made known to the respondent. If the amount had not been made known to the respondent the condition requiring payment at that point of time is incapable of performance. So, the interest of justice requires that the time may be extended by the court so as not to frustrate the right of appeal of the respondent.

On Question (b)

[32] Whether the general power of the court to extend time under para 8 of the Schedule to the CJA 1964 is applicable or not to a statute that does not provide the power for the extension of time will depend on the provision of the statute. If from the wording of the statute, the time prescribed for the doing of an act is mandatory and the condition to be fulfilled exists during the period and is capable of performance, the general power to extend time under para 8 of the Schedule to the CJA 1964 is not applicable. But, as in this case, where the condition ie, the payment of the rate has not existed because the amount thereof is not yet known to the respondent and is therefore incapable of performance by the respondent, the interest of justice requires that the general power to extend may be ordered by the court.

[33] In the circumstances of this case, I am of the view that the learned judge was right to make the order for the extension of time for the respondent to pay the rate so as not to frustrate the respondent's right of appeal through no fault of theirs. I would therefore dismiss the appeal with costs and order that the deposit be paid to the respondent towards their taxed costs.

[34] Both my learned sister, Siti Norma Yaakob, CJ (M) and my learned brother, Steve Shim Lip Kiong, CJ (SS) who have had sight of this judgment concur that for

all the reasons given therein the appeal be dismissed with costs and that the deposit be paid out to the respondent to account for their taxed costs.

Appeal dismissed with costs.

Reported by Sally Kee